

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARIAN ANTHONY LUCAS,)	
Petitioner,)	1:99-cv-00017
)	
v.)	
)	
PATRICK L. FETZNER , et al.,)	
Respondents.)	

MEMORANDUM ORDER

In or around February 1999, Darian Anthony Lucas commenced the instant action by filing a complaint pursuant to 42 U.S.C. § 1983. He claimed various violations of his civil rights. In June 2002, this Court granted summary judgment in favor of the defendants and the case was closed. [Doc. No. 101]. Lucas filed an appeal with the United States Court of Appeals for the Third Circuit. Lucas v. Fetzner, et al., Appellate Docket No. 02-2719 (June 21, 2002). On January 6, 2003, the Third Circuit Court dismissed the appeal pursuant to 28 U.S.C. § 1915(e)(2)(B). The Court then denied Lucas's subsequent motions to amend the judgment, for reconsideration, and to recall the mandate. By order dated April 1, 2004, the Third Circuit Court denied a second motion filed by Lucas to amend the judgment and notified him that no further post-decision submissions would be accepted for filing.

On June 19, 2009, Lucas filed in this case a document entitled "Petition for Review" [Doc. No. 112], in which he sought various forms of relief not available to him, including that this Court direct the Third Circuit Court to address issues at Appellate Docket No. 02-2719 that

purportedly were not ruled upon. This Court denied the "Petition for Review" on June 22, 2009. [Doc. No. 113].

Next, on January 14, 2010, Lucas filed the instant motion [Doc. No. 118], in which he requests that this Court reopen this action and declare it (and several other unrelated civil rights actions) "non-frivolous." Lucas is seeking this relief because he has filed so many frivolous lawsuits that he now is barred from proceeding *in forma pauperis* in civil actions under the provision of the Prison Litigation Reform Act (the "PLRA") codified at 28 U.S.C. § 1915(g). See Third Circuit Court Order dated 10/23/2003 in Lucas v. Tennis, et al., Appellate Docket No. 03-1190 (denying Lucas *in forma pauperis* status because he has had a least three prior civil actions dismissed as frivolous or for failure to state a claim).¹

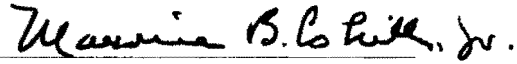
Lucas's motion must be construed as a motion for relief from a judgment or order pursuant to Federal Rule of Civil Procedure 60(b). That rule provides that the Court may, in its discretion, provide relief from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is not longer equitable; or (6) any other reason that justifies relief. A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more

¹ In an effort to avoid the provisions of the PLRA, Lucas also has filed corresponding actions here and in the United States District Court for the Middle District of Pennsylvania in which he is, by way of purported petitions for habeas or for mandamus, requesting that his various civil rights actions be reopened and declared "non-frivolous." See Lucas v. Maravich, et al., 2:09-cv-01327 (W.D. Pa.); Lucas v. Maravich, et al., 2:09-cv-01052 (W.D. Pa.); Lucas v. Maravich, et al., 2:09-cv-01167 (W.D. Pa.); Lucas v. Sinnott, et al., 1:09-cv-0187 (W.D. Pa.); Lucas v. Forney, et al., 4:09-cv-01619 (M.D. Pa.); Lucas v. Cawley, et al., 4:09-cv-01850 (M.D. Pa.).

than a year after the entry of the judgment or order or the date of the proceeding. Fed.R.Civ.Pro. 60(c).

None of the criteria set forth in Rule 60(b) are present here. Nor has Lucas filed this motion within a reasonable time. Accordingly, the following ORDER is hereby entered.

AND NOW, this 22nd day of March, 2010, IT IS HEREBY ORDERED that the instant motion to reopen this action and declare it "non-frivolous", construed as a motion for relief under Federal Rule of Civil Procedure 60(b) [Doc. No. 118] be and hereby is **DENIED**.


Maurice B. Cohill, Jr.
United States District Court Judge

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